

VENABLE LLP
Philip T. Sheng (SBN 278422)
David E. Fink (SBN 169212)
101 California Street, Suite 3800
San Francisco, CA 94111
Telephone: 415-653-3750
Facsimile: 415-653-3755
Email: ptsheng@venable.com
defink@venable.com

Attorneys for Non-Party Warner Bros. Discovery, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games, Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**NON-PARTY WARNER BROS.
DISCOVERY, INC.'S REQUEST TO
SEAL HIGHLY CONFIDENTIAL
INFORMATION**

Honorable James Donato

VENABLE LLP
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CA 94111
415.653.3750

1 Non-party Warner Bros. Discovery, Inc. (“WBD”) respectfully moves under Civil Local
2 Rule 79-5 and the Court’s Order, D.I. 727, to seal a small number of trial exhibits that contain
3 WBD confidential information and to seal the courtroom for limited portions of testimony related
4 to such WBD confidential information.

5 On November 7, 2023, Google LLC (“Google”) provided notice to WBD that certain
6 documents that may contain WBD confidential information had been identified as trial exhibits to
7 be used in open court the next day, November 8, 2023. These documents comprise information
8 that has been designated by one or more of the parties as NON-PARTY HIGHLY
9 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY under the Protective Order. D.I. 248.
10 The Protective Order generally requires at least four business days’ notice of the intent to use such
11 material at trial; WBD was provided just one day’s notice. Moreover, Google did not provide
12 WBD copies of the trial exhibits until 1:22 p.m. PST on November 7, 2023, less than four hours
13 before WBD’s deadline to submit this motion to seal. *See* D.I. 727.

14 If Google or any other party to the litigation is permitted to proceed with using the trial
15 exhibits and testimony concerning them, WBD respectfully requests that the Court seal the trial
16 exhibits and temporarily seal the courtroom during testimony concerning the trial exhibits. WBD
17 recognizes the strong public interest in access to trial proceedings and judicial records.
18 Nonetheless, sealing of judicial records is appropriate when “compelling reasons” overcome that
19 presumption. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).
20 Non-party interests in confidential information are particularly strong. *See In re Adobe Systems,*
21 *Inc. Sec. Litigation*, 141 F.R.D. 155, 161-62 (N.D. Cal. 1992).

22 The trial exhibits and testimony concerning them will reveal highly confidential financial
23 and business information, including WBD revenue data and subscriber information. Throughout
24 this litigation, WBD as a non-party has consistently and proactively taken steps to protect its
25 confidential information. For example, in connection with prior motions to seal concerning similar
26 confidential information, WBD submitted declarations from its Chief Executive Officer and
27 President of Global Streaming and Games, Jean-Briac Perrette, as well as its Chief Financial and
28 Strategy Officer for Streaming, Joshua Walker, explaining the sensitivity of such information and

the harm it would cause WBD if such information were disclosed to competitors or to the public. These declarations are attached hereto in support of this motion.¹ See August 16, 2022 Perrette Declaration ¶¶ 4-10; July 5, 2023 Walker Declaration ¶¶ 4-10; August 1, 2023 Walker Declaration (D.I. 563) ¶¶ 4-10. These declarations outline the concrete harm that WBD will suffer from the disclosure of such confidential information, which is sufficient to meet the “compelling reasons” standard. *In re Electronic Arts*, 298 Fed. Appx. 568, 569 (9th Cir. 2008); *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1226 (Fed. Cir. 2013); *Powertech Tech., Inc. v. Tessera, Inc.*, 2012 U.S. Dist. LEXIS 75831, at *4 (N.D. Cal. May 31, 2012).

Thus, WBD respectfully requests that the following trial exhibits be sealed and for the courtroom to be temporarily sealed during testimony concerning the trial exhibits.

Exhibit (Bates Number)	Portion sought to be sealed	Reasons for sealing request
Exhibit 1704-014 (GOOG-PLAY-004683882.R)	Seal entirety	Includes confidential developer feedback reflecting business strategy from WBD regarding the Google Play store; if competitors had this information, they could use it to unfairly improve their products and to disadvantage WBD products.
Exhibit 1704-016 (GOOG-PLAY-004683884.R)	Seal entirety	Includes confidential developer feedback reflecting business strategy from WBD regarding the Google Play store; if competitors had this information, they could use it to unfairly improve their products and to disadvantage WBD products.
Exhibit 1704-019 (GOOG-PLAY-004683887.R)	Seal entirety	Contains WBD’s confidential information about the number of subscribers for a WBD app; this information is not available outside of WBD; if disclosed it could be used to harm WBD’s competitive

¹ Because WBD was not given sufficient notice of any party’s intent to use WBD confidential information at trial and because WBD was not timely provided with copies of the trial exhibits or sufficiently detailed descriptions of them, WBD relies on these prior declarations in support of this motion.

		position and provide competitors an unfair advantage in the marketplace.
Exhibit 2698-052 (GOOG-PLAY-011073577)	Seal entirety	Contains WBD's confidential financial information about revenue for WBD's non-game applications; this information is not available outside of WBD; if disclosed it could be used to harm WBD's competitive position and provide competitors an unfair advantage in the marketplace.

Respectfully submitted,

VENABLE LLP

/s/ Philip T. Sheng

By: Philip T. Sheng (SBN 278422)
David E. Fink

*Attorneys for Non-Party Warner Bros.
Discovery, Inc.*

Dated: November 7, 2023